IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 50 OF 2006
AND
CIVIL APPLICATION NO.187/2006

1. Stm. Usha Anand S. Talwadkar,
and another . ..... Appellants.

V/s.

1. Smt. Satyawati B. Sattarkar and ors. ..... Respondents.

Mr. Iftikhar Agha, Advocate for the appellants.

Mr Joseph Vaz, Advocate for the respondents.

CORAM : P.V. KAKADE, J.

DATE : 11th December, 2006.

P.C.

Heard learned Counsel for both the parties. Perused the record. The appellants-plaintiffs have preferred this appeal against the order passed by the Civil Judge, Sr. Division, Ponda, rejecting the application for temporary injunction filed by the plaintiffs and vacating the earlier ex parte order passed in that matter.

2. The plaintiffs filed the suit against the defendants, seeking

relief of declaration, permanent injunction and all other consequential reliefs stating that they were the co-owners in possession and enjoyment of the landed property known as "Gorbhata Agar Xaba Naique" also known as "Gorbhata Agar Xaba Naique" commonly known as "Queluiachem" registered under Matriz Nos.215 and 216 in the Taluka Revenue Office at Ponda, Goa. The said property is described under No. 25191 in the office of Land Registrar and presently surveyed under No.38/0 in the record of rights of Village Curti, Ponda Taluka. The plaintiffs also filed an application for temporary injunction while filing the suit and obtained an ex parte temporary injunction against the defendants. However, when the parties were heard on merits, the learned trial Judge was of the view that the plaintiffs had failed to prove that there was any prima facie case in their favour. It was further held that no irreparable loss would be caused to them in case no relief was granted and further it was held that the principles of balance of convenience would tilt in favour of the defendants. It was also held that the Civil Court had, prima facie, no jurisdiction to issue injunction in view of the claim of tenancy made by the defendants.

3. With the help of learned Counsel for both the parties, I have gone through the entire record and I do not see any reason to disturb the order passed by the trial Court, especially in view of the fact that the learned

trial Judge has rightly held that prima facie evidence is sufficient to show that the defendants were in possession of the suit property by virtue of their tenancy rights which were under adjudication before the competent authority. On the other hand, it is also apparent that the plaintiffs have only produced the licence for the year 2002 to extract cashew juice from the cashew grove in the suit property. However, it is apparent that in a suit involving question whether the defendants are tenants and whether the suit property is an agricultural land, the civil Court jurisdiction to decide those questions would not arise. In the present case, the suit property granted to the plaintiffs mainly consists of cashew plantation and other fruit bearing trees in the same land, besides the paddy field. The defendants have taken a specific stand that they are tenants of the suit property bearing Survey No.38/0 which has been inherited by them upon the death of one Bombi Satarkar whose name has been recorded in the tenant's column of the record of right. The record also shows that the tenants are paying Rs.90/- and four cudos of cashew seeds to the owners, per year and, further the entire documentary evidence produced by the defendants forties their claim regarding physical possession over the suit property, alleged to be by virtue of their tenancy rights.

4. It is needless to mention that at the stage of determining the

issue of temporary injunction, an element of possession of the property is required to be seen, so as to maintain status quo pending the final adjudication of the dispute between the parties.

5. The learned Counsel for the appellants sought to put reliance on the Judgment of this Court in the case of ***Anina D.P. Kaulekar and 5 ors. vs. Maria V.E. Dias Sapeco*** 1990(1) Goa Law Times (318). In fact the ratio laid down by this Judgment helps the defendants more than the plaintiffs-appellants.

6. In view of these aspects, I hold that no interference is required in the order passed by the Civil Judge, Sr. Division, Ponda and as such, the appeal stands dismissed with no order as to costs. In view of the facts and circumstances, the hearing of the suit is expedited so as to dispose of the same as expeditiously as possible. Interim order, if any, stands vacated. Consequently, the civil application also stands dismissed with no order as to costs.

P.V. KAKADE, J.

ssm.